



BRB No. 16-0552

LUIGI A. MALTA)	
)	
Claimant-Respondent)	
)	
v.)	
)	
WOOD GROUP PSN, INCORPORATED)	
)	
and)	
)	
SIGNAL MUTUAL INDEMNITY)	DATE ISSUED: <u>Apr. 13, 2017</u>
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Based on the Parties' Joint Stipulation of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Al J. Robert, Jr. (Law Office of Al J. Robert, Jr., LLC), New Orleans, Louisiana, and Frank M. Buck, Jr. (The Buck Law Firm), Gretna, Louisiana, for claimant.

Scott A. Soule and Randy J. Hoth (Blue Williams, L.L.P.), Mandeville, Louisiana, for employer/carrier.

Matthew W. Boyle (Nicholas C. Geale, Acting Solicitor of Labor; Maia Fisher, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2013-LHC-01511) of Administrative Law Judge Larry W. Price rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This case is before the Board for the second time. Claimant was employed as an offshore warehouseman at employer's Black Bay Central Facility, a fixed platform in Louisiana state waters. 1st Hr'g Tr. (Jan. 14, 2014) at 7, 10. As an offshore warehouseman, claimant's duties included shipping, receiving, warehousing, dispatching tools and supplies to different operators for use on various satellite platforms, and loading and unloading vessels at various times throughout the day. *Id.* at 10-11, 13. Claimant's warehousing duties also consisted of maintaining the warehouse, maintaining the stock in the warehouse, and ordering supplies. *Id.* at 22.

The Central Facility provided support for various satellite oil and gas production platforms located in the Helis Black Bay field. Most of the equipment and supplies needed for operations in the Helis Black Bay field were shipped by vessel from Venice, Louisiana to the warehouse at the Central Facility. 1st Hr'g Tr. at 18, 22-23. These materials included pipes, valves, compressors, nitrogen cylinders, tool bags, and repair parts. *Id.* at 12, 30-31.

On April 14, 2012, claimant received a call requesting help to unload a vessel. 1st Hr'g Tr. at 18. Claimant was unloading a CO₂ bottle that had been mislabeled as "empty" from the cargo basket when it forcefully discharged. In diving out of the way, claimant fell and sustained injuries to his back, left arm, shoulder, and foot. When the accident occurred, claimant was on the platform in front of the warehouse. He did not go onto the vessel. *Id.* at 25.

Employer asserted that claimant's injury was not covered under the Act, but it paid claimant temporary total disability benefits under the Louisiana Workers' Compensation Act. 1st Decision and Order at 1. The administrative law judge denied claimant's claim for benefits because he concluded that claimant's injury did not occur on a "situs" covered by the Act. 1st Decision and Order at 7. Claimant appealed the administrative law judge's Decision and Order to the Board, challenging the administrative law judge's

finding that the Black Bay Central Facility is not a covered situs. The Board reversed the administrative law judge's decision, holding that the Central Facility is a covered situs pursuant to Section 3(a) of the Act, 33 U.S.C. §903(a). *Malta v. Wood Group Prod. Services*, 49 BRBS 31 (2015). The Board remanded the case for consideration of any remaining issues. *Id.* at 35.

On remand, the administrative law judge conducted a second hearing on the issue of whether claimant was engaged in "maritime employment" pursuant to Section 2(3) of the Act, 33 U.S.C. §902(3).¹ Claimant testified as to his duties and estimated that he spent up to 10 hours per week or 25 to 35 percent of his shift loading and unloading vessels. 2nd Hr'g Tr. (April 13, 2016) at 37. Claimant clarified that the supply vessels came out to the Central Facility every day and there were always supplies to be loaded onto the vessels for shipment to the prospective satellite fields. *Id.* at 40-41. Claimant stated that he would load and unload the supplies while standing on the platform outside the warehouse doors. *Id.*

After the second hearing, the parties submitted a joint stipulation to the administrative law judge. *See* Joint Stipulation submitted May 26, 2016. The Joint Stipulation provided as follows:

As per the Decision of the Benefits Review Board issued on May 29, 2015, which the Employer and Authorized Group Self-Insurer dispute, there is jurisdiction under the LHWCA; ... (d) employer and Authorized Group Self-Insurer shall pay LWEC benefits from April 18, 2015 and on-going, at a rate of \$289.48 per week, while reserving their right to properly controvert payment of benefits due to a change of status, discovery of new evidence, DOL or OALJ approval of a joint 8(i) Petition for Compromise Settlement of remaining claims or the emergence of any other grounds for controversion; ... (h) The Employer and Carrier specifically reserve their right to all appellate remedies, including but not limited to, those before the Benefits Review Board and the U.S. Fifth Circuit Court of Appeal.

Joint Stipulation at 2-3. In a June 10, 2016 Decision and Order, the administrative law judge incorporated the Joint Stipulation in its entirety and ordered employer to pay

¹ The parties agreed that the issue of claimant's "status" under the Act was the only issue to be addressed at the hearing. 2nd Hr'g Tr. at 4, 7.

claimant benefits from April 18, 2015 at a rate of \$289.15 per week for his loss in wage-earning capacity. *See* Decision and Order Based on the Parties' Joint Stipulation at 2.

On appeal, employer challenges the administrative law judge's "finding" that the claimant is a "maritime employee" under Section 2(3) of the Act. Employer contends the award must be reversed because claimant was not engaged in maritime employment. Claimant responds, urging affirmance of the administrative law judge's decision as to claimant's status. The Director, Office of Workers' Compensation Programs (the Director), also responds, filing a motion to remand on the grounds that the administrative law judge's decision did not address the issue of claimant's "status" under the Act and that there are no substantive findings for the Board to review. Employer replies to claimant's response, asserting that the issue of status remained a contested issue and that the administrative law judge's award must be reversed.

It is well-settled that both the "situs" and "status" requirements must be met for coverage under the Act. 33 U.S.C. §§902(3), 903(a); *see Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 6 BRBS 150 (1977). The Board held that claimant's injury occurred on a covered situs pursuant to Section 3(a) of the Act. *Malta*, 49 BRBS at 35. Accordingly, the administrative law judge accurately stated at the second hearing that whether claimant has status as a maritime employee is the only issue remaining as to whether the initial prerequisites for coverage have been met. 2nd Hr'g Tr. at 4. The parties' Joint Stipulation, adopted by the administrative law judge's Decision and Order, stated "as per the Decision of the Benefits Review Board issued on May 29, 2015, which the Employer and Authorized Group Self-Insurer dispute, there is jurisdiction under the LHWCA...."² *See* Joint Stipulations at 2; Decision and Order Based on the Parties' Joint Stipulations at 2.

We agree with the Director that this case must be remanded. The Joint Stipulations submitted by the parties and accepted in their entirety by the administrative law judge improperly interpreted the Board's prior decision. Moreover, employer's reservation of a right to challenge the stipulated facts reflects its intent to not be bound by the stipulations.

A stipulation is "[a]n express waiver . . . conceding for the purposes of trial the truth of some alleged fact" *Mitri v. Global Linguist Solutions*, 48 BRBS 41, 44, n.9

² We note that the parties inaccurately use the term "jurisdiction" to refer to coverage under the Act. The Board has held that questions of status and situs relate to coverage under the Act and not subject-matter jurisdiction. *See Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989) (citing *Ramos v. Universal Dredging Corp.*, 653 F.2d 1353, 13 BRBS 689(CRT) (9th Cir. 1981)).

(2014) (quoting *Vander Linden v. Hodges*, 193 F.2d 268, 279 (4th Cir. 1999)). As a general rule, stipulations are binding upon those who enter into them. *Brown v. Maryland Shipbuilding & Drydock Co.*, 18 BRBS 104, 107 (1986). However, stipulations offered in lieu of factual evidence are not binding on any party if they evince an incorrect application of law. *Aitmbarek v. L-3 Communications*, 44 BRBS 115 (2010); *Puccetti v. Ceres Gulf*, 24 BRBS 25 (1990). To the extent the parties' stipulation and the administrative law judge's acceptance thereof reflect an understanding that the Board's decision held that claimant satisfied the Act's status requirement, the stipulation is mistaken. The Board's decision did not address the issue of status nor was it before the Board in the first appeal because the administrative law judge's initial decision did not address the status requirement. The Board reversed only the administrative law judge's finding that claimant's injury did not occur on a covered "situs," vacated the denial of benefits, and remanded for consideration of the remaining issues, to include status, if this was a contested issue. *See Malta*, 49 BRBS at 35.

Moreover, the stipulations state that employer disagrees with the Board's prior decision and preserves employer's right to controvert payment of benefits and to seek all appellate remedies, as exemplified by the employer's appeal in this matter. The stipulations, whereby the parties agreed to coverage and that benefits will be paid while simultaneously "reserving [employer's] right to properly controvert payment of benefits" and to appeal, are ambiguous and inconsistent. Employer's appellate brief makes clear that it did not intend to agree to a finding that claimant has met the "status" requirement for coverage under the Act. The lack of intent to be bound invalidates the stipulation as it is axiomatic that a stipulation may not be subject to subsequent variation because the "vital feature" of a stipulation is "its conclusiveness upon the party making it." *Standard Fire Ins. Co. v. Knowles*, __ U.S. __, 133 S.Ct. 1345, 1349 (2013); *see, e.g., Mitri*, 48 BRBS at 43-44 (holding that a stipulation that gives an employer the right to unilaterally decrease or terminate claimant's compensation upon changes in condition is contrary to law).³ For these reasons, the parties' joint stipulation that there is coverage under the Act is invalid. As a consequence, we must vacate the administrative law judge's Decision and Order based on the parties' invalid stipulation regarding coverage under the Act.

We also disagree with the parties' apparent belief that the administrative law judge's Decision and Order contains a "finding" that claimant was engaged in maritime employment pursuant to Section 2(3). The administrative law judge indicated at the

³ Compensation orders based on the parties' stipulations may be modified by a subsequent order issued pursuant to Section 22 of the Act, 33 U.S.C. §922. *See Mitri v. Global Linguist Solutions*, 48 BRBS 41 (2014); *Buttermore v. Electric Boat Corp.*, 46 BRBS 41 (2012); *Ramos v. Global Terminal & Container Services, Inc.*, 34 BRBS 83 (1999).

hearing that he was leaning towards a finding that the status requirement had been met, stating “my first look at [the Board’s decision, the Board] almost found that there was status also within their undisputed facts.”⁴ 2nd Hr’g Tr. at 4. The parties subsequently entered into the stipulations, which as discussed, improperly interpreted the Board’s decision.

As the administrative law judge did not make any specific findings or reach any legal conclusions with regard to claimant’s status as a maritime employee, we must remand the case for him to do so. 5 U.S.C. §557(c)(3)(A); 33 U.S.C. §919(d). The United States Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, has reiterated that while an administrative law judge “is not required to make express findings on collateral contentions considered by it,” an administrative law judge is required to “make findings upon the material issues of fact, law, or discretion presented to it by the administrative proceedings.” *H.B. Zachry Co. v. Quinones*, 206 F.3d 474, 480, 34 BRBS 23, 27(CRT) (5th Cir. 2000). The Board is not empowered to engage in a de novo review of the issue of claimant’s status. See 20 C.F.R. §802.301(a). Claimant’s status as a maritime employee is an issue that must first be determined by the administrative law judge, who is the fact-finder. See *Gelinas v. Electric Boat Corp.*, 45 BRBS 69 (2011) (remand for administrative law judge to discuss evidence of record and cite relevant case precedent in addressing status issue).

⁴ The administrative law judge did not identify the aspect of the Board’s decision to which he was referring. To the extent the administrative law judge was referring to the Board’s citation to the uncontradicted testimony of claimant and employer’s project manager that loading and unloading vessels was a large part of claimant’s job, the Board’s recitation does not constitute a holding by the Board on the issue of status. As discussed *supra*, the Board addressed only the situs issue. Regardless, the administrative law judge’s statement at the hearing is not a formal finding that claimant has met the status requirement.

Accordingly, the administrative law judge's Decision and Order Based on the Parties' Joint Stipulations is vacated and the case remanded to the administrative law judge for consideration of the issue of status and the other remaining issues.⁵

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

⁵ The parties may resubmit stipulations on uncontested issues.